



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/253,014	02/19/1999	THOMAS G. WOOLSTON	55422.000005	5135

20985 7590 06/25/2004

FISH & RICHARDSON, PC
12390 EL CAMINO REAL
SAN DIEGO, CA 92130-2081

EXAMINER

KEMPER, MELANIE A

ART UNIT - PAPER NUMBER

3622

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/253,014	Applicant(s) WOOLSTON, THOMAS G.	
	Examiner M Kemper	Art Unit 3622	<i>NW</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION:

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-25, 33-55, 64-99 and 133-218 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-25, 33-55, 64-99, 133-218 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 212, 215-217 are rejected under 35 U.S.C. 102(b) as being anticipated by Banatre et al., "The Design and Building of Enchere, A Distributed Electronic Marketing System", Communications of the ACM, January 1986.

Banatre teaches a computer implemented method of facilitating internet based auctions comprising: receiving input from a seller of an item to be auctioned, the received input including an identification of the item to be auctioned and input relating to scheduling an auction for the item ("The proposition from a seller is displayed on the buyers control unit, and the clock shows the starting price for the lot as given by the seller"; "Imagine the situation where two lots L1 and L2 are to be sold, L1 proposed by seller S1... To ensure that propositions are presented to buyers in the same order... the name of the sender is appended to the message corresponding to the proposition of the seller."; "S1, S2, and S3: seller sites; S1 starts a sale (s11) with his or her local time h1=10, S2 starts a sale (s12) with his or her local time h2=15, and S3 starts a sale (s13) with his or her local time h3=20"; "Proposition(Name:NameofSeller;TheLot:Lot), p. 20,25,appendix); and initiating an online auction for the item based at least in part on the auction scheduling input received from the seller ("By pushing a key, the seller sends his or her proposition to interested buyers and waits for their offer." P. 20, "S1, S2, and S3: seller sites; S1 starts a sale (s11) with his or her local time h1=10, S2 starts

a sale (s12) with his or her local time h2=15, and S3 starts a sale (s13) with his or her local time h3=20" p. 25) wherein the received auction scheduling indicates that the auction is to be started immediately and invoked by the seller manually.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11, 16-18, 150-152 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman et al. "Electronic Agricultural Auctions in the United Kingdom" in view of Debenedictis et al., patent number 5,625,823 further in view of "on Delphi/Boston New for February 1987" further in view of Banatre et al., "The Design and Building of Enchere, A Distributed Electronic Marketing System".

Borman teaches a computer implemented method for conducting auctions comprising:

receiving at a communication handler program executing on a host computer information from a seller corresponding to an item for auction, the information received from the seller including a designation of a category selected from a list of categories (cattle, sheep, pigs, grain) and input relating to scheduling an auction for the item ("Electronic auctions are held several times a day Mondays to Fridays" ; "A lot appears on the computer screen at a certain starting price. This price is then decreased every five seconds..");

processing at least a portion of the received information into a presentation format including an indication of the category of the item for auction ("information...is made available electronically to potential buyers several hours prior to the auction in the form of an electronic catalogue");

based at least in part on the received auction-scheduling input, conducting an auction for the item over the internet by presenting the presentation format to a plurality of bidders ("A lot appears on the computer screen at a certain starting price. This price is then decreased every five seconds...until the first offer to buy is registered...The price of the product is increased if further offers to buy are registered..." p. 2, Figure 1);

receiving at the host computer at least one bid on the auctioned item from a bidder ("This price is then decreased every five seconds...until the first offer to buy is registered...The price of the product is increased if further offers to buy are registered..." p. 2, Figure 1).

Borman also teaches the information received from the seller includes a price for the auction item ("A lot appears on the computer screen at a certain starting price.").

Borman does not show processing the received information into a presentation format by a database-to-presentation format formatting program or receiving at a host computer payment information from the bidder.

Debenedictis teaches processing the received information into a presentation format by a database-to-presentation format formatting program (fig. 28, col. 28, line 65-col. 29, line 33). It would have been obvious to one having ordinary skill in the art at the time of the invention to have processed the received information into a presentation

Art Unit: 3622

format by a database-to-presentation format formatting program as in DeBenedictis since the presentation format would have provided the pictures of the products as desired by Borman in a windows format for the electronic catalog of Borman.

Delphi/Boston teaches an online auction comprising: receiving at a communication handler program executing on a host computer information including a designation of a category and input relating to a scheduling an auction for the item ("Items are arranged on Tables; each Table will be sold off at a different time. The final selling time will be posted for each item in the text describing the item"); based at least in part on the scheduling information, conducting an auction for the item over the internet ("WGBH/CHANNEL 2, public television in Boston is holding the first online computer auction on DELPHI/Boston, beginning at 9:00 am on Wednesday February 11 and ending at 10:00 pm on Saturday February 14"); receiving at the host computer at least one bid on the auctioned item from a bidder ("Once the bidding commences, you may bid on any item at any time of day or night. To bid you must outbid..by at least \$1"); and receiving at a host computer payment information from the bidder ("Registration requires use of a Visa or MasterCard. In some circumstances payment by check will be accepted...The shipping charges will be added to your credit card charge for the item purchased") which includes associating the payment information with the bid received from the bidder and the payment information identifies a credit card account. It would have been obvious to one having ordinary skill in the art at the time of the invention to have received at a host computer payment information as

Art Unit: 3622

described in Delphi/Boston since the payment information would have completed the transaction of Borman and would have at least provided for the fees of EASE.

Banatre teaches a computer implemented method for conducting auctions comprising receiving at a communication handler program executing on a host computer information from a seller corresponding to an item for auction, the information received from the seller including input relating to scheduling an auction for the item (immediate auction – “By pushing a key, the seller sends his or her proposition to interested buyers and waits for their offer.” P. 20, “S1, S2, and S3: seller sites; S1 starts a sale (s11) with his or her local time $h1=10$, S2 starts a sale (s12) with his or her local time $h2=15$, and S3 starts a sale (s13) with his or her local time $h3=20$ ” p. 25). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included input relating to scheduling an auction for the item (immediate auction) as in Banatre in order to accommodate sellers offering the same or similar lots in Borman as suggested for fairness in Banatre (“sellers have an equal chance of having their proposition seen at any given time by different buyers” p. 20).

5. Claims 11, 13-14, 16-19, 147-153 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman et al. “Electronic Agricultural Auctions in the United Kingdom” in view of Ferguson et al., patent number 5,819,092 further in view of “on Delphi/Boston New for February 1987” further in view of Cummings “Stealing the Real Estate Spotlight”, Business Journal of New Jersey, v. 3, n.6, p. 37.

Borman teaches a computer implemented method for conducting auctions comprising:

receiving at a communication handler program executing on a host computer information from a seller corresponding to an item for auction, the information received from the seller including a designation of a category selected from a list of categories (cattle, sheep, pigs, grain) and input relating to scheduling an auction for the item ("Electronic auctions are held several times a day Mondays to Fridays" ; "A lot appears on the computer screen at a certain starting price. This price is then decreased every five seconds.." and where the request to post an item for auction inherently includes input relating to scheduling an auction since it is necessary to perform the auction);

processing at least a portion of the received information into a presentation format including an indication of the category of the item for auction ("information...is made available electronically to potential buyers several hours prior to the auction in the form of an electronic catalogue");

based at least in part on the received auction scheduling input, conducting an auction for the item over the internet by presenting the presentation format to a plurality of bidders ("A lot appears on the computer screen at a certain starting price. This price is then decreased every five seconds...until the first offer to buy is registered...The price of the product is increased if further offers to buy are registered..." p. 2, Figure 1);

receiving at the host computer at least one bid on the auctioned item from a bidder ("This price is then decreased every five seconds...until the first offer to buy is

registered... The price of the product is increased if further offers to buy are registered..." p. 2, Figure 1).

Borman does not show processing the received information into a presentation format by a database-to-presentation format formatting program or receiving at a host computer payment information from the bidder.

Ferguson teaches receiving at a communication handler program executing on a host computer information from a seller corresponding to an item for auction, the information received from the seller including a designation of a category selected from a list of categories (col. 9, lines 10-12, 44-49, col. 23, lines 37-45); processing at least a portion of the received information into a presentation format by a database-to-presentation format formatting program, the presentation format including an indication of the category (col. 17, lines 35-48, col. 16, lines 41-52, col. 15, lines 5-7); conducting an auction over the internet (col. 9, lines 44-50, col. 36-42); and receiving at the host computer at least one bid and payment information from the bidder (col. 9, lines 10-12, 44-49, col. 10, lines 5-11). Ferguson also teaches a database to worldwide web mapping module (col. 6, line 65 – col. 7, line 10, lines 27-42, col. 10, lines 25-39); receiving payment information from the bidder via a worldwide web page server executing on the host computer (fig. 16, col. 10, lines 5-11); associating the payment information with the bid received from the bidder and the payment information identifies a credit card account (fig. 16, col. 10, lines 5-11); the presentation format comprises a hyper text markup language format (col. 10, lines 25-39); the communication handler program comprises a Unix daemon (col. 8, lines 18-35, col. 28, lines 23-36). It would

have been obvious to one having ordinary skill in the art at the time of the invention to have used the input relating to the categories, processing according to a formatting program, and conducted the auction and received bids and payment information over the internet as in Ferguson since these features of Ferguson would have provided a feature rich online service to many customers which includes at least the images and text for the electronic catalogue and video pictures desired in Borman (Ferguson, col. 1, line 50 – col. 2, line 15).

Delphi/Boston teaches an online auction comprising: receiving at a communication handler program executing on a host computer information including a designation of a category and input relating to a scheduling an auction for the item ("Items are arranged on Tables; each Table will be sold off at a different time. The final selling time will be posted for each item in the text describing the item"); based at least in part on the scheduling information, conducting an auction for the item over the internet ("WGBH/CHANNEL 2, public television in Boston is holding the first online computer auction on DELPHI/Boston, beginning at 9:00 am on Wednesday February 11 and ending at 10:00 pm on Saturday February 14"); receiving at the host computer at least one bid on the auctioned item from a bidder ("Once the bidding commences, you may bid on any item at any time of day or night. To bid you must outbid..by at least \$1"); and receiving at a host computer payment information from the bidder ("Registration requires use of a Visa or MasterCard. In some circumstances payment by check will be accepted...The shipping charges will be added to your credit card charge for the item purchased") where payment information is associated with the bid

received from the bidder and identifies a credit card account. It would have been obvious to one having ordinary skill in the art at the time of the invention to have received at a host computer payment information as described in Delphi/Boston since the payment information would have completed the transaction of Borman and/or would have at least provided for the fees of EASE.

Concerning receiving information from the seller including input relating to scheduling an auction for the item, Cummings teaches "a distinct advantage of selling property at an auction is that 'the seller sets the conditions' ... the seller chooses the specific day and time when the property is to be sold". In considering Cummings, it is clear that the reference is reasonably pertinent to the particular problem with which the inventor is involved or reasonably related to the problem that the applicant has solved, i.e. "conducting the auction, at least in part, based upon seller input relating to scheduling the auction." Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included input from the seller relating to scheduling the auction of Borman since it is the desire of Borman to provide a "complementary service" to traditional auctions and "to replace traditional auctions by electronic auctions" which would include incorporating the steps of a traditional auction including the seller scheduling the auction as shown in Cummings. Borman also teaches "The electronic auctions themselves are very similar to the traditional auctions."

Further, "it is well settled that it is not 'invention' to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. (In re Venner, 120 USPQ 192-196). Thus, it would have been obvious to one having

ordinary skill in the art at the time of the invention to have replaced a manual step of inputting a schedule for the auction by the seller with an automatic control interface for inputting a schedule for the auction by the seller in the system of Borman since it has generally been established that the use of a conventional control to automate a previously manual generation involves only routine skill in the art. In this case, Patterson, Jr. et al., demonstrates routine skill in the art of providing an automatic control interface for allowing the seller to input the schedule for an auction (fig. 4, 386h-386m, col. 12, line 60- col. 13, line 1) or Debenedictis et al for inputting a bidding duration (fig. 29).

Further, concerning scheduling input for duration, start/end times, start immediately, invoked manually, it would have been obvious to one having ordinary skill in the art at the time of the invention that these time parameters are encompassed with the scheduling features of Borman, Ferguson, DELPHI/Boston, and Cummings.

6. Claims 12, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman et al. "Electronic Agricultural Auctions in the United Kingdom" in view of Ferguson et al., patent number 5,819,092 further in view of "on Delphi/Boston New for February 1987" further in view of Cummings "Stealing the Real Estate Spotlight", Business Journal of New Jersey, v. 3, n.6, p. 37 as above, further in view of Flynn et al.; patent number 5,223,699.

Flynn teaches passing the received payment information from a host computer to an external clearinghouse and receiving at a host computer a response from the external clearinghouse that payment has cleared and processing the received payment

Art Unit: 3622

information with a transaction processor to debit an account identified by the payment information (col. 4, lines 17-22, col. 7, lines 25-32). It would have been obvious to one of ordinary skill in the art at the time of the invention to have passed the received payment information from a host computer to an external clearinghouse and received at a host computer a response from the external clearinghouse that payment has cleared and processed the received payment information to debit an account identified by the payment information in order to process the credit card information of DELPHI/Boston and Ferguson.

7. Claims 20-23, 154-159, 208 are rejected under 35 U.S.C. 103(a) as being unpatentable over "on DELPHI/Boston" New for February 1987 in view of Ferguson et al., patent number 5,819,092.

DELPHI/Boston teaches a computer implemented method of conducting auctions comprising:

receiving information about an item to be auctioned, the received information including a designation of a category, selected from a list of categories, under which the item is to be auctioned ("Hardware, software, furnishings, peripherals-new, used and refurbished- are all available for your inspection now.", "Items are arranged on Tables; each Table will be sold off at a different time") and input relating to scheduling an auction for the item ("The final selling time will be posted for each item in the text describing the item.")

processing at least a portion of the received information to create a presentation format corresponding to the item to be auctioned, the presentation including an indication of the category of the item to be auctioned ("Registered bidders can review descriptions and bid on more than 200 items of interest to computer users and enthusiasts. Hardware, software, furnishings, peripherals-new, used and refurbished-are all available for your inspection now.").

based at least in part on the received auction scheduling input, conducting an auction for the item over the internet by presenting the presentation format to a plurality of internet participants ("WGBH/CHANNEL 2, public television in Boston is holding the first online computer auction on DELPHI/Boston, beginning at 9:00 am on Wednesday February 11 and ending at 10:00 pm on Saturday February 14.");

receiving at least one bid for the item from at least one internet participant ("Once the bidding commences, you may bid on any item at any time of day or night. To bid you must outbid the CURRENT HIGH BID by at least \$1. Each bid posted automatically becomes the new high bid!" "If you are bidding from outside the Boston area, you may arrange for shipment...you are the successful high bidder.");

providing to the internet participant instructions for sending payment information to pay for the auctioned item ("Registration requires use of a Visa or MasterCard. In some circumstances payment by check will be accepted-see details in the area ABOUT THE AUCTION"). DELPHI/Boston also teaches wherein conducting an auction for the item comprises opening the auction process to participants on the internet and further comprising automatically closing the auction process to the internet participants based

on a predetermined condition ("WGBH/CHANNEL 2, public television in Boston is holding the first online computer auction on DELPHI/Boston, beginning at 9:00 am on Wednesday February 11 and ending at 10:00 pm on Saturday February 14."); receiving payment information from the participant, the payment information being associated with the bid ("Registration requires use of a Visa or MasterCard. In some circumstances payment by check will be accepted-see details in the area ABOUT THE AUCTION.").

Ferguson teaches receiving information about an item including a designation of a category selected from a list of categories (col. 23, lines 37-50, line 65 – col. 24, line 22); generating a tracking identifier to identify the item to be auctioned (item number for catalog); processing at least a portion of the received information to create a presentation format corresponding to the item to be auctioned including an indication of the category (col. 23, lines 37-50, line 65 – col. 24, line 22, col. 15, lines 5-10, col. 9, lines 45-49); conducting an auction for the item over the internet by presenting the presentation format to a plurality of internet participants and receiving at least one bid (col. 9, lines 45-49); and providing instructions for sending payment information (col. 10, lines 5-11). Ferguson also teaches receiving a bid for an item via a world wide web page server interface (col. 9, lines 45-49, col. 7, lines 35-47). It would have been obvious to one having ordinary skill in the art at the time of the invention to have implemented the internet features and tracking identifier of Ferguson in the system of Delphi/Boston since the features of Ferguson would have provided a feature rich online service for a large group of participants as suggested in Ferguson for the items of

Delphi/Boston. It also would have been obvious to one having ordinary skill in the art at the time of the invention to have received the bid for the auctioned item via a world wide web page server interface as in Ferguson in the system of DELPHI/Boston since the world wide web page server interface would have provided multimedia information describing the items for auction in DELPHI/Boston and would have provided "a rich online service available to customers and clients" for "a company that wishes to develop an online presence".

Further, concerning scheduling input for duration, start/end times, start immediately, invoked manually, it would have been obvious to one having ordinary skill in the art at the time of the invention that these time parameters are encompassed with the scheduling features of Ferguson and DELPHI/Boston.

8. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over "on DELPHI/Boston" New for February 1987 in view of Ferguson et al., patent number 5,819,092 further in view of Flynn et al, patent number 5,223,699.

Flynn teaches receiving from the participant payment information identifying a credit card account, passing the credit card account information to a clearinghouse and receiving authorization from the clearinghouse that payment with the credit card has cleared (col. 4, lines 17-29, col. 7, lines 19-32). It would have been obvious to one of ordinary skill in the art at the time of the invention to have passed the credit card account information to a clearinghouse and received authorization for the clearinghouse

Art Unit: 3622

that payment with the credit card has cleared in order to process the credit card information of DELPHI/Boston.

9. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over "on DELPHI/Boston" New for February 1987 in view of Ferguson et al., patent number 5,819,092 further in view of Lindsey, patent number 5,285,383.

Lindsey teaches transferring legal ownership of the item to the participant (col. 24, lines 10-18). It would have been obvious to one having ordinary skill in the art at the time of the invention to have transferred legal ownership as in Lindsey in the system of DELPHI/Boston and Ferguson since the transfer of ownership of Lindsey would have been adopted for the intended use of trading without having to actually transfer any documentary evidence of title thereby eliminating incidences due to theft, loss, or damage.

10. Claims 33, 35, 37, 39, 160-165 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman et al., "Electronic Agricultural Auctions in the United Kingdom" in view of Ferguson et al., patent number 5,819,092 further in view of "on DELPHI/Boston" New for February 1987 further in view of Cummings "Stealing the Real Estate Spotlight", Business Journal of New Jersey, v. 3, n.6, p. 37.

Borman teaches a system for conducting auctions comprising:

an auction item presentation means for presenting items for auction (fig. 1, "the buyers have direct access to the system, using their own PCs and modem links"; "Information about the products for sale is fed into IBM compatible PCs or terminals" (products include cattle, sheep, pigs, grain) "This information...is made available

electronically to potential buyers several hours prior to the auction in the form of an electronic catalogue.");

an auction process means for executing an auction process for the item based at least in part on scheduling input ("The electronic auctions themselves are very similar to the traditional auctions. A lot appears on the computer screen at a certain starting price. This price is then decreased every five seconds by a predetermined amount, until the first offer to buy is registered, i.e., until the first buyer presses the appropriate key on his/her keyboard. The price of the product is increased if further offers to buy are registered. The product is declared as sold, when 15 seconds have elapsed since the last offer to buy.");

an auction bid recipient means for receiving, during the auction process, at least one bid for an item being presented by the auction item presentation means (fig. 1, "The electronic auctions themselves are very similar to the traditional auctions. A lot appears on the computer screen at a certain starting price. This price is then decreased every five seconds by a predetermined amount, until the first offer to buy is registered, i.e., until the first buyer presses the appropriate key on his/her keyboard. The price of the product is increased if further offers to buy are registered. The product is declared as sold, when 15 seconds have elapsed since the last offer to buy.").

Ferguson teaches an auction item presentation means for presenting items for auction to participants connected via the internet (col. 9, lines 45-49, col. 7, lines 36-42, col. 23, lines 37-45, col. 30, lines 5-10); an auction bid recipient means for receiving during the auction process at least one bid (col. 9, lines 45-49); and payment recipient

Art Unit: 3622

means for receiving payment information (col. 10, lines 5-11). Ferguson also teaches the auction item presentation means comprises database to presentation formatting program (col. 6, line 65 – col. 7, line 10, lines 27-42, col. 10, lines 25-39); the received payment information identifies a credit card (col. 10, lines 5-11); the auction item presentation means presents the item information as a markup language page (col. 10, lines 25-39, 55-61). It would have been obvious to one having ordinary skill in the art at the time of the invention to have used the auction item presentation means presenting items for auction arranged into categories as in Ferguson since these features of Ferguson would have provided a feature rich online service to many customers which includes at least the images and text for the electronic catalogue and video pictures desired in Borman (Ferguson, col. 1, line 50 – col. 2, line 15).

DELPHI/Boston teaches payment recipient means for receiving payment information from a bidding participant, the payment information corresponding to the item for which the bid was received ("Registration requires use of a Visa or MasterCard. In some circumstances payment by check will be accepted-see details in the area ABOUT THE AUCTION"; "The shipping charges will be added to your credit card charge for the item purchased."). It would have been obvious to one having ordinary skill in the art at the time of the invention to have payment recipient means as in DELPHI/Boston in the system of Borman since the payment recipient means would have completed the bidding transaction of Borman.

Concerning scheduling input received from the seller, Cummings teaches "a distinct advantage of selling property at an auction is that 'the seller sets the conditions'

Art Unit: 3622

... the seller chooses the specific day and time when the property is to be sold". In considering Cummings, it is clear that the reference is reasonably pertinent to the particular problem with which the inventor is involved or reasonably related to the problem that the applicant has solved, i.e. "conducting the auction, at least in part, based upon seller input relating to scheduling the auction." Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included input from the seller relating to scheduling the auction of Borman since it is the desire of Borman to provide a "complementary service" to traditional auctions and "to replace traditional auctions by electronic auctions" which would include incorporating the steps of a traditional auction including the seller scheduling the auction as shown in Cummings. Borman also teaches "The electronic auctions themselves are very similar to the traditional auctions."

Further, "it is well settled that it is not 'invention' to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. (In re Venner, 120 USPQ 192-196). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to have replaced a manual step of inputting a schedule for the auction by the seller with an automatic control interface for inputting a schedule for the auction by the seller in the system of Borman since it has generally been established that the use of a conventional control to automate a previously manual generation involves only routine skill in the art. In this case, Patterson, Jr. et al., demonstrates routine skill in the art of providing an automatic control interface for allowing the seller to input the schedule for an auction (fig. 4, 386h-386m,

Art Unit: 3622

col. 12, line 60- col. 13, line 1) or Debenedictis et al for inputting a bidding duration (fig. 29).

Further, concerning scheduling input for duration, start/end times, start immediately, invoked manually, it would have been obvious to one having ordinary skill in the art at the time of the invention that these time parameters are encompassed with the scheduling features of Borman, Ferguson, DELPHI/Boston, and Cummings.

11. Claims 34, 36, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman et al., "Electronic Agricultural Auctions in the United Kingdom" in view of Ferguson and "on DELPHI/Boston" New for February 1987 as above, further in view of Flynn et al., patent number 5,223,699.

Flynn teaches payment verification means for passing the received payment information to an external clearinghouse for verification (col. 7, lines 25-28); a transaction processor to debit an account identified by the payment information (col. 7, lines 25-28); the received payment information identifies a credit card (col. 4, lines 17-21, col. 7, lines 25-28); the payment information identifies a credit card and wherein the transaction processor charges the credit card for the payment associated with the approved bid (col. 4, lines 17-21, col. 7, lines 25-28). It would have been obvious to one having ordinary skill in the art at the time of the invention to have the payment verification means and transaction processor as in Flynn in the system of Borman and DELPHI/Boston since the verification means and transaction processor would have cleared the payment by credit card (Visa or MasterCard) of DELPHI/Boston.

Art Unit: 3622

12. Claims 40-42, 166-171 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman et al., "Electronic Agricultural Auctions in the United Kingdom" in view of "on DELPHI/Boston" New for February 1987 further in view of Ferguson et al., patent number 5,819,092 further in view of Cummings "Stealing the Real Estate Spotlight", Business Journal of New Jersey, v. 3, n.6, p. 37.

Borman teaches an auction participant system comprising:

an auction item receiving means for receiving a page of information including one or more items available for auction (fig. 1, "the buyers have direct access to the system, using their own PCs and modem links"; "Information about the products for sale is fed into IBM compatible PCs or terminals" (products include cattle, sheep, pigs, grain) "This information...is made available electronically to potential buyers several hours prior to the auction in the form of an electronic catalogue.");

an auction process means for executing an auction process corresponding to the item (fig. 1, "The electronic auctions themselves are very similar to the traditional auctions. A lot appears on the computer screen at a certain starting price. This price is then decreased every five seconds by a predetermined amount, until the first offer to buy is registered, i.e., until the first buyer presses the appropriate key on his/her keyboard. The price of the product is increased if further offers to buy are registered. The product is declared as sold, when 15 seconds have elapsed since the last offer to buy.");

an auction bid input means for inputting a bid for at least one of the items presented in the received page ("The electronic auctions themselves are very similar to

Art Unit: 3622

the traditional auctions. A lot appears on the computer screen at a certain starting price. This price is then decreased every five seconds by a predetermined amount, until the first offer to buy is registered, i.e., until the first buyer presses the appropriate key on his/her keyboard. The price of the product is increased if further offers to buy are registered. The product is declared as sold, when 15 seconds have elapsed since the last offer to buy."); and

bid transmission means for transmitting the bid information to a remote bid processor system (fig. 1).

DELPHI/Boston teaches inputting payment information associated with the bid and bid transmission means for transmitting the bid and payment information to a remote bid processor system ("Registration requires use of a Visa or MasterCard. In some circumstances payment by check will be accepted-see details in the area ABOUT THE AUCTION"; "The shipping charges will be added to your credit card charge for the item purchased."). DELPHI/Boston also teaches the payment information identifies a credit card provided by the auction participant to pay for the item in the amount of the bid ("Registration requires use of a Visa or MasterCard."; "The shipping charges will be added to your credit card charge for the item purchased."). It would have been obvious to one having ordinary skill in the art at the time of the invention to have payment information as in DELPHI/Boston in the system of Borman since the payment information would have completed the bidding transaction of Borman.

Ferguson teaches auction item receiving means for receiving a page of information including one or more items available, the received page including one or

Art Unit: 3622

more categories with which the items for auction are associated, each seller designating an item category (col. 9, lines 45-49, col. 23, lines 35-45, col. 25, lines 6-11, col. 30, lines 5-10); an auction bid input means for inputting a bid and bid transmission means for transmitting the bid and payment information via the packet-switched network to a remote bid processor system (col. 9, lines 45-49, col. 10, lines 5-11, col. 8, lines 29-33). Ferguson also teaches the received page comprises a markup language page and wherein the auction item receiving means comprises a web browser connected via the internet to a server at the remote bid processor system (col. 7, lines 35-42, col. 10, lines 25-39). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included a page of information including a designation of item categories and each seller designating an item category and bid transmitting via a packet switched network as in Ferguson in the system of Borman and Delphi/Boston since the page information means would have provided a feature rich online service including the categories of Borman and text and images as desired by Borman and as suggested by Ferguson and would have provided an efficient transmission of payment information to complete the transactions of Borman and Delphi/Boston.

Concerning an auction process means for executing an auction based at least in part on scheduling input received from the seller, Cummings teaches "a distinct advantage of selling property at an auction is that 'the seller sets the conditions' ... the seller chooses the specific day and time when the property is to be sold". In considering Cummings, it is clear that the reference is reasonably pertinent to the particular problem with which the inventor is involved or reasonably related to the problem that the

applicant has solved, i.e. "conducting the auction, at least in part, based upon seller input relating to scheduling the auction." Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included input from the seller relating to scheduling the auction of Borman since it is the desire of Borman to provide a "complementary service" to traditional auctions and "to replace traditional auctions by electronic auctions" which would include incorporating the steps of a traditional auction including the seller scheduling the auction as shown in Cummings. Borman also teaches "The electronic auctions themselves are very similar to the traditional auctions."

Further, "it is well settled that it is not 'invention' to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. (In re Venner, 120 USPQ 192-196). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to have replaced a manual step of inputting a schedule for the auction by the seller with an automatic control interface for inputting a schedule for the auction by the seller in the system of Borman since it has generally been established that the use of a conventional control to automate a previously manual generation involves only routine skill in the art and the same result, scheduling the auction, exists. (In this case, Patterson, Jr. et al., demonstrates routine skill in the art of providing an automatic control interface for allowing the seller to input the schedule for an auction (fig. 4, 386h-386m, col. 12, line 60-col. 13, line 1).) or Debenedictis et al for inputting a bidding duration (fig. 29).

Further, concerning scheduling input for duration, start/end times, start immediately, invoked manually, it would have been obvious to one having ordinary skill

Art Unit: 3622

in the art at the time of the invention that these time parameters are encompassed with the scheduling features of Borman, Ferguson, DELPHI/Boston, and Cummings.

13. Claims 43-44, 46, 172-177, 189, 209 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman et al., "Electronic Agricultural Auctions in the United Kingdom" in view of "on DELPHI/Boston" New for February 1987 further in view of Ferguson et al., patent number 5,819,092 further in view of Cummings "Stealing the Real Estate Spotlight", Business Journal of New Jersey, v. 3, n.6, p. 37.

Borman teaches a system for auctioning a uniquely identified item comprising:

a database of data records, each data record relating to an item and comprising an identifier to uniquely identify the item and an item category, designated by a seller of the item, under which the item is to be offered for auction (electronic catalogue);

an auction system, accessible by a plurality of participants that presents an item for auction (fig. 1);

wherein the auction system executes an auction process corresponding to the item based at least in part on scheduling input, receives bids from one or more of the participants and terminates the auction when one or more predetermined criteria are satisfied ("The electronic auctions themselves are very similar to the traditional auctions.

A lot appears on the computer screen at a certain starting price. This price is then decreased every five seconds by a predetermined amount, until the first offer to buy is registered, i.e., until the first buyer presses the appropriate key on his/her keyboard.

The price of the product is increased if further offers to buy are registered. The product

Art Unit: 3622

is declared as sold, when 15 seconds have elapsed since the last offer to buy."). The auction system refuses to accept bids after the one or more predetermined criteria have been satisfied ("The product is declared as sold, when 15 seconds have elapsed since the last offer to buy.").

DELPHI/Boston teaches wherein the auction system transmits to a selected auction participant information about where the selected auction participant should submit payment information for the auctioned item ("In some circumstances payment by check will be accepted-see details in the area ABOUT THE AUCTION") and wherein the auction system receives payment information with each bid ("In some circumstances payment by check will be accepted-see details in the area ABOUT THE AUCTION"; "The shipping charges will be added to your credit card charge for the item purchased."). Delphi/Boston also teaches the auction system selects a bid based on the one or more predetermined criteria, processes the credit card account for the amount of the bid ("To bid you must outbid the CURRENT HIGH BID by at least \$1. Each bid posted automatically becomes the new high bid"... "The final selling time will be posted for each item in the text describing the item"... "The shipping charges will be added to your credit card charge for the item purchased."). It would have been obvious to one having ordinary skill in the art at the time of the invention to have transmitted information about where the selected auction participant should submit payment information as in DELPHI/Boston in the system of Borman in order to complete the transaction of Borman.

Ferguson teaches a database of data records, each data record relating to an item and comprising an identifier to uniquely identify the item and an item category, designated by a seller of the item, under which the item is to be offered for auction (col. 6, line 65 – col. 7, line 10, col. 8, lines 4-14, col. 23, lines 15-25, 36-55, 65-67); an auction system accessible by a plurality of participants via the packet switched network that presents an item for auction by providing a mark-up language page of information corresponding to an item that is available for auction during a specified time, the mark-up language page including an indication of the item's category (col. 8, lines 55-67, col. 10, lines 25-39, col. 9, lines 45-49, col. 13, lines 56-60, col. 14, lines 20-29, col. 15, lines 1-7); wherein the auction system executes an auction process corresponding to the item based at least in part on scheduling input received from the seller of the item, receives bids from one or more participants over the packet switched network (col. 9, lines 44-49, col. 8, lines 29-33). Ferguson also teaches the auction system receives payment information with each bid (col. 9, lines 45-49, col. 10, lines 5-11). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included a page of information including a designation of item categories and each seller designating an item category and bid transmitting via a packet switched network as in Ferguson in the system of Borman and Delphi/Boston since the page information means would have provided a feature rich online service including the categories of Borman and text and images as desired by Borman and as suggested by Ferguson and would have provided an efficient transmission of payment information to complete the transactions of Borman and Delphi/Boston.

Concerning an auction process based at least in part on scheduling input received from the seller, Cummings teaches "a distinct advantage of selling property at an auction is that 'the seller sets the conditions' ... the seller chooses the specific day and time when the property is to be sold". In considering Cummings, it is clear that the reference is reasonably pertinent to the particular problem with which the inventor is involved or reasonably related to the problem that the applicant has solved, i.e. "conducting the auction, at least in part, based upon seller input relating to scheduling the auction." Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included input from the seller relating to scheduling the auction of Borman since it is the desire of Borman to provide a "complementary service" to traditional auctions and "to replace traditional auctions by electronic auctions" which would include incorporating the steps of a traditional auction including the seller scheduling the auction as shown in Cummings. Borman also teaches "The electronic auctions themselves are very similar to the traditional auctions."

Further, "it is well settled that it is not 'invention' to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. (In re Venner, 120 USPQ 192-196). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to have replaced a manual step of inputting a schedule for the auction by the seller with an automatic control interface for inputting a schedule for the auction by the seller in the system of Borman since it has generally been established that the use of a conventional control to automate a previously manual generation involves only routine skill in the art and the same result,

Art Unit: 3622

scheduling the auction, exists. (In this case, Patterson, Jr. et al., demonstrates routine skill in the art of providing an automatic control interface for allowing the seller to input the schedule for an auction (fig. 4, 386h-386m, col. 12, line 60- col. 13, line 1) or Debenedictis et al for inputting a bidding duration (fig. 29)).

Further, concerning scheduling input for duration, start/end times, start immediately, invoked manually, it would have been obvious to one having ordinary skill in the art at the time of the invention to have included these time parameters since they are encompassed with the scheduling features of Borman, Ferguson, DELPHI/Boston, and Cummings.

14. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borman, DELPHI/Boston, Ferguson, Cummings, as above, further in view of Debenedictis et al., patent number 5,625,823.

Debenedictis teaches an auction system interface for receiving bids from auction participants connected to the auction system (fig. 28). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included an interface for receiving bids as in Debenedictis in the system of Borman, DELPHI/Boston, Ferguson, Cummings since the interface would have been adopted for the intended use of accepting bids over the internet as in Ferguson.

15. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borman et al., "Electronic Agricultural Auctions in the United Kingdom" in view of "on DELPHI/Boston" New for February 1987 further in view of Ferguson et al., patent

Art Unit: 3622

number 5,819,092 further in view of Cummings "Stealing the Real Estate Spotlight", Business Journal of New Jersey, v. 3, n.6, p. 37 as above, further in view of Flynn et al., patent number 5,223,699.

Flynn teaches receiving payment information identifying a credit card account, and transmitting the credit card information to a remote verification system before processing (col. 7, lines 25-30). It would have been obvious to one having ordinary skill in the art at the time of the invention to have the payment verification means and transaction processor as in Flynn in the system of Borman and DELPHI/Boston since the verification means and transaction processor would have cleared the payment by credit card (Visa or MasterCard) of DELPHI/Boston.

16. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borman et al., on DELPHI/Boston, Ferguson et al., patent number 5,819,092, Cummings, Flynn, as above further in view of Lindsey, patent number 5,285,383.

Lindsey teaches transferring legal ownership of the item to the participant (col. 24, lines 10-18). It would have been obvious to one having ordinary skill in the art at the time of the invention to have transferred legal ownership as in Lindsey in the system of Borman and DELPHI/Boston since the transfer of ownership of Lindsey would have been adopted for the intended use of trading without having to actually transfer any documentary evidence of title thereby eliminating incidences due to theft, loss, or damage.

Art Unit: 3622

17. Claim 49-51, 178-183 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman et al., "Electronic Agricultural Auctions in the United Kingdom" in view of "on DELPHI/Boston" New for February 1987 and "congrats.msg" of DELPHI/Boston further in view of Ferguson et al., patent number 5,819,092 further in view of Cummings "Stealing the Real Estate Spotlight", Business Journal of New Jersey, v. 3, n.6, p. 37.

Borman teaches an auction participation system comprising:

an auction page recipient means that receives from a server a page containing information about at least one item being auctioned (fig. 1, "the buyers have direct access to the system, using their own PCs and modem links"; "Information about the products for sale is fed into IBM compatible PCs or terminals" (products include cattle, sheep, pigs, grain) "This information...is made available electronically to potential buyers several hours prior to the auction in the form of an electronic catalogue.");

an auction process means for conducting an auction of the item (fig. 1, "The electronic auctions themselves are very similar to the traditional auctions. A lot appears on the computer screen at a certain starting price. This price is then decreased every five seconds by a predetermined amount, until the first offer to buy is registered, i.e., until the first buyer presses the appropriate key on his/her keyboard. The price of the product is increased if further offers to buy are registered. The product is declared as sold, when 15 seconds have elapsed since the last offer to buy.");

bid input means for enabling a participant to input a bid for submission to the auction processor ("The electronic auctions themselves are very similar to the traditional auctions. A lot appears on the computer screen at a certain starting price. This price is

Art Unit: 3622

then decreased every five seconds by a predetermined amount, until the first offer to buy is registered, i.e., until the first buyer presses the appropriate key on his/her keyboard. The price of the product is increased if further offers to buy are registered. The product is declared as sold, when 15 seconds have elapsed since the last offer to buy.").

DELPHI/Boston teaches bid award receiving means for receiving an indication that the bid was awarded to the participant (congrats.msg, "Congratulations! You are the successful high bidder for the item mentioned above."); and payment information input means for enabling the participant to input payment information in response to receiving a bid award ("...you may arrange for shipment of any item for which you are the successful high bidder. The shipping charges will be added to your credit card charge for the item purchased.", congrats.msg "In order to claim your item, you must communicate your acceptance of the bid by 12:00 noon tomorrow. You may do so by calling WGBH at (617) 492-0202 or by sending email to username WGBH.").

DELPHI/Boston also teaches the payment information identifies a credit card provided by the auction participant to pay for the item in the amount of the bid ("Registration requires use of a Visa or MasterCard."; "The shipping charges will be added to your credit card charge for the item purchased."). It would have been obvious to one having ordinary skill in the art at the time of the invention to have payment information including bid award as in DELPHI/Boston in the system of Borman since the payment information would have completed the bidding transaction of Borman.

Art Unit: 3622

Ferguson teaches auction page recipient means that receives from a server at the auction processor a page containing information about at least one item being auctioned, the received page including a designation of an item category with which the at least one item being auctioned is associated, the item category being specified by a seller of the item (col. 9, lines 45-49, col. 23, lines 35-45, col. 25, lines 6-11, col. 30, lines 5-10); bid input means for enabling a participant to input a bid for submission to the auction processor via the packet-switched network (col. 9, lines 45-49, col. 10, lines 5-11, col. 8, lines 29-33). Ferguson also teaches a web browser system that accesses a server at the auction processor to receive the page (col. 7, lines 35-42, col. 10, lines 25-39). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included a page of information including a designation of item categories and each seller designating an item category and bid transmitting via a packet switched network as in Ferguson in the system of Borman and Delphi/Boston since the page information means would have provided a feature rich online service including the categories of Borman and text and images as desired by Borman and as suggested by Ferguson and would have provided an efficient transmission of payment information to complete the transactions of Borman and Delphi/Boston.

Concerning an auction process means for conducting an auction based at least in part on scheduling input received from the seller, Cummings teaches "a distinct advantage of selling property at an auction is that 'the seller sets the conditions' ... the seller chooses the specific day and time when the property is to be sold". In considering Cummings, it is clear that the reference is reasonably pertinent to the particular problem

with which the inventor is involved or reasonably related to the problem that the applicant has solved, i.e. "conducting the auction, at least in part, based upon seller input relating to scheduling the auction." Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included input from the seller relating to scheduling the auction of Borman since it is the desire of Borman to provide a "complementary service" to traditional auctions and "to replace traditional auctions by electronic auctions" which would include incorporating the steps of a traditional auction including the seller scheduling the auction as shown in Cummings. Borman also teaches "The electronic auctions themselves are very similar to the traditional auctions."

Further, "it is well settled that it is not 'invention' to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. (In re Venner, 120 USPQ 192-196). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to have replaced a manual step of inputting a schedule for the auction by the seller with an automatic control interface for inputting a schedule for the auction by the seller in the system of Borman since it has generally been established that the use of a conventional control to automate a previously manual generation involves only routine skill in the art and the same result, scheduling the auction, exists. (In this case, Patterson, Jr. et al., demonstrates routine skill in the art of providing an automatic control interface for allowing the seller to input the schedule for an auction (fig. 4, 386h-386m, col. 12, line 60- col. 13, line 1).) or Debenedictis et al for inputting a bidding duration (fig. 29).

Further, concerning scheduling input for duration, start/end times, start immediately, invoked manually, it would have been obvious to one having ordinary skill in the art at the time of the invention that these time parameters are encompassed with the scheduling features of Borman, Ferguson, DELPHI/Boston, and Cummings.

18. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borman et al., "Electronic Agricultural Auctions in the United Kingdom" in view of DELPHI/Boston further in view of Ferguson et al., further in view of Cummings as above, further in view of Flynn et al., patent number 5,223,699.

Flynn teaches receiving payment information identifying a credit card account, and transmitting the credit card information to a remote verification system before processing (col. 7, lines 25-30). It would have been obvious to one having ordinary skill in the art at the time of the invention to have the payment verification means and transaction processor as in Flynn in the system of Borman and DELPHI/Boston since the verification means and transaction processor would have cleared the payment by credit card (Visa or MasterCard) of DELPHI/Boston.

19. Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borman et al., on DELPHI/Boston, Ferguson et al., patent number 5,819,092, Cummings, Flynn as above further in view of Lindsey, patent number 5,285,383.

Lindsey teaches transferring legal ownership of the item to the participant (col. 24, lines 10-18). It would have been obvious to one having ordinary skill in the art at the time of the invention to have transferred legal ownership as in Lindsey in the system of

Art Unit: 3622

Borman and DELPHI/Boston since the transfer of ownership of Lindsey would have been adopted for the intended use of trading without having to actually transfer any documentary evidence of title thereby eliminating incidences due to theft, loss, or damage.

20. Claim 54, 184-188 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borman et al., "Electronic Agricultural Auctions in the United Kingdom" in view of Ferguson et al., patent number 5,819,092 further in view of Cummings "Stealing the Real Estate Spotlight", Business Journal of New Jersey, v. 3, n.6, p. 37.

Borman teaches a system for facilitating commerce comprising:

auction item receiving means for receiving from one or more auction participants information regarding an item to be posted for an auction, the received information including a designation of a category selected from a list of categories ("Information about the products for sale is fed into IBM compatible PCs or terminals" (products include cattle, sheep, pigs, grain) "This information...is made available electronically to potential buyers several hours prior to the auction in the form of an electronic catalogue.");

auction processor means for processing information received by the auction item receiving means and presenting the processed information in a format to be transmitted to auction participants ("This information...is made available electronically to potential buyers several hours prior to the auction in the form of an electronic catalogue."); and

bid receiving means for receiving bids for the item presented to auction participants (fig. 1).

Ferguson teaches auction item receiving means for receiving from one or more auction participants information regarding an item to be posted for an auction, the received information including a designation of a category selected from a list of categories under which the item is to be auctioned (col. 9, lines 45-49, col. 23, lines 37-55, col. 24, lines 34-37); auction processor means for processing information received by the auction item receiving means and presenting the processed information in a format to be transmitted to auction participants over a packet-switched network, the format including an indication of the category of the item to be auctioned, the auction processor means including an auction process means for executing an auction process for the item based at least in part on scheduling input received from the seller of the item (col. 9, lines 45-49, col. 15, lines 5-7, lines 26-35, col. 8, lines 29-33); bid receiving means for receiving bids for the item (col. 9, lines 45-49). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included receiving information including a designation of a category selected from a list of categories as in Ferguson in Borman since this would have been adopted for the intended use of generating the electronic catalogue of Borman for including cattle, sheep, pigs, grain. It also would have been obvious to have presented the processed information in a format to be transmitted to auction participants over a packet-switched network in order to efficiently transmit the text and images of Borman for the electronic catalogue.

Concerning an auction processor means including an auction process means for executing an auction based at least in part on scheduling input received from the seller, Cummings teaches "a distinct advantage of selling property at an auction is that 'the

seller sets the conditions' ... the seller chooses the specific day and time when the property is to be sold". In considering Cummings, it is clear that the reference is reasonably pertinent to the particular problem with which the inventor is involved or reasonably related to the problem that the applicant has solved, i.e. "conducting the auction, at least in part, based upon seller input relating to scheduling the auction."

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included input from the seller relating to scheduling the auction of Borman since it is the desire of Borman to provide a "complementary service" to traditional auctions and "to replace traditional auctions by electronic auctions" which would include incorporating the steps of a traditional auction including the seller scheduling the auction as shown in Cummings. Borman also teaches "The electronic auctions themselves are very similar to the traditional auctions."

Further, "it is well settled that it is not 'invention' to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. (In re Venner, 120 USPQ 192-196). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to have replaced a manual step of inputting a schedule for the auction by the seller with an automatic control interface for inputting a schedule for the auction by the seller in the system of Borman since it has generally been established that the use of a conventional control to automate a previously manual generation involves only routine skill in the art and the same result, scheduling the auction, exists. (In this case, Patterson, Jr. et al., demonstrates routine skill in the art of providing an automatic control interface for allowing the seller to input

Art Unit: 3622

the schedule for an auction (fig. 4, 386h-386m, col. 12, line 60- col. 13, line 1).) or

Debenedictis et al for inputting a bidding duration (fig. 29).

Further, concerning scheduling input for duration, start/end times, start immediately, invoked manually, it would have been obvious to one having ordinary skill in the art at the time of the invention that these time parameters are encompassed with the scheduling features of Borman, Ferguson, and Cummings.

21. Claims 55, 64-77, 80, 82-84 86-93, 97, 190-195 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman et al., "Electronic Agricultural Auctions in the United Kingdom" in view of Ferguson et al., patent number 5,819,092 further in view of Cummings "Stealing the Real Estate Spotlight", Business Journal of New Jersey, v. 3, n.6, p. 37.

Borman teaches a computer implemented method of facilitating internet auctions comprising: receiving information from a seller including information about an item to be auctioned ("Information about the products for sale is fed into IBM compatible PCs or terminals" (products include cattle, sheep, pigs, grain) "This information...is made available electronically to potential buyers several hours prior to the auction in the form of an electronic catalogue."); based in part on the auction scheduling input, auctioning the item at the computer system with an auction process program; presenting the auction to participants in response to a request to display information about the item; and receiving at least one bid and updating the display in response to receipt of the bid ("information...is made available electronically to potential buyers several hours prior to

the auction in the form of an electronic catalogue"; "The electronic auctions themselves are very similar to the traditional auctions. A lot appears on the computer screen at a certain starting price. This price is then decreased every five seconds by a predetermined amount, until the first offer to buy is registered, i.e., until the first buyer presses the appropriate key on his/her keyboard. The price of the product is increased if further offers to buy are registered. The product is declared as sold, when 15 seconds have elapsed since the last offer to buy.") which includes an opening bid and a current bid and updating the display each time a higher bid is received.

Ferguson teaches receiving information from a seller including information about the item to be auctioned at a computer system programmed to receive information over a communication network including a selection of a predetermined category from a predetermined list of categories (col. 9, lines 45-49, col. 23, lines 36-55; line 65 = col. 24, line 22); presenting the auction to a plurality of auction participants via a computer network in response to a request to display information about the item to be auctioned (col. 9, lines 45-49, col. 15, lines 5-8, col. 24, lines 35-40). Ferguson also teaches item subcategories (col. 15, lines 5-7); the information received from a seller comprises a verbal description or a graphical description or both (col. 10, lines 25-39, col. 24, lines 6-15) where subjective information would include at least the condition of the item since condition (good, fair, poor) would be considered as a factor in price such as the example of the car of Ferguson. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included receiving information including a designation of a category selected from a list of categories as in Ferguson in Borman

Art Unit: 3622

since this would have been adopted for the intended use of generating the electronic catalogue of Borman for including cattle, sheep, pigs, grain and for displaying auction items according to the needs of the user. Ferguson also teaches the seller registers to sell items for auction including identity information (col. 23, lines 31-35, col. 9, lines 45-49); receiving financial information from the seller (col. 30, lines 5-10, col. 29, lines 35-55); opening a debit/credit account for the seller (col. 9, lines 10-15, col. 10, lines 5-10, col. 30, lines 5-10); the seller or auction participant logs into the auction computer system (col. 20, lines 9-11); the seller's or auction participant's computing platform comprises a personal computer or a workstation (col. 1, lines 50-65, col. 2, lines 1-5, col. 8, lines 15-25); the seller provided information includes an indication from the seller whether the item offered for auction is to be advertised and appears on a main web page (col. 2, lines 1-5, col. 19, lines 32-40); the auction participant browses the predetermined list of categories (col. 15, lines 5-7); an auction participant makes electronic payment (col. 10, lines 5-9).

Concerning receiving information from the seller including input relating to scheduling an auction for the item, Cummings teaches "a distinct advantage of selling property at an auction is that 'the seller sets the conditions' ... the seller chooses the specific day and time when the property is to be sold". In considering Cummings, it is clear that the reference is reasonably pertinent to the particular problem with which the inventor is involved or reasonably related to the problem that the applicant has solved, i.e. "conducting the auction, at least in part, based upon seller input relating to scheduling the auction." Thus, it would have been obvious to one of ordinary skill in the

Art Unit: 3622

art at the time of the invention to have included input from the seller relating to scheduling the auction of Borman since it is the desire of Borman to provide a "complementary service" to traditional auctions and "to replace traditional auctions by electronic auctions" which would include incorporating the steps of a traditional auction including the seller scheduling the auction as shown in Cummings. Borman also teaches "The electronic auctions themselves are very similar to the traditional auctions."

Further, "it is well settled that it is not 'invention' to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. (In re Venner, 120 USPQ 192-196). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to have replaced a manual step of inputting a schedule for the auction by the seller with an automatic control interface for inputting a schedule for the auction by the seller in the system of Borman since it has generally been established that the use of a conventional control to automate a previously manual generation involves only routine skill in the art and the same result, scheduling the auction, exists. (In this case, Patterson, Jr. et al., demonstrates routine skill in the art of providing an automatic control interface for allowing the seller to input the schedule for an auction (fig. 4, 386h-386m, col. 12, line 60- col. 13, line 1).) or Debenedictis et al for inputting a bidding duration (fig. 29).

Further, concerning scheduling input for duration, start/end times, start immediately, invoked manually, it would have been obvious to one having ordinary skill

Art Unit: 3622

in the art at the time of the invention that these time parameters are encompassed with the scheduling features of Borman, Ferguson, and Cummings.

22. Claims 78-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman, Ferguson, and Cummings, as above, further in view of Du Bois, "Better Impression: Art Market Continues to Show Recovery Signs".

Du Bois teaches seller provided information includes a reserve price for the item to be auctioned which is not revealed to auction participants ("Among works that did not reach his secret reserve price were a 1878 Degas..."). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included a reserve price in the system of Borman, Ferguson, and Cummings in order to protect the seller from unrealistic low bids where Cummings suggests that the seller reserves the right to refuse to sell to the highest bidder.

23. Claim 81 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borman, Ferguson, and Cummings as above, further in view of DELPHI/Boston.

DELPHI/Boston teaches the seller ships an item purchased at auction to a destination specified by the purchasing auction participant ("If you are bidding from outside the Boston area, you may arrange for shipment of any item for which you are the successful high bidder. The shipping charges will be added to your credit card charge for the item purchased."). It would have been obvious to one having ordinary skill in the art at the time of the invention to have the seller ship the item to the participant as in DELPHI/Boston since this would have been adopted for the intended use of providing the item to the buyer (as in the delivery of catalog items of Ferguson).

Art Unit: 3622

24. Claims 85, 192-194 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman, Ferguson, and Cummings, as above, further in view of Banatre "The Design and Building...Marketing System.

Banatre teaches notifying an auction participant that a bid by that participant has been accepted ("the seller decides either to accept or reject this offer and transmits this decision to the buyer"). Banatre also teaches the scheduling input indicates the auction is to be started immediately and is invoked by the seller manually (p. 20, p. 25). It would have been obvious to one having ordinary skill in the art at the time of the invention to have notified the participant in order to begin the payment transactions.

25. Claims 94-96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman, Ferguson, and Cummings, as above, further in view of Keithley et al., patent number 5,584,025.

Keithley teaches displaying advertisements to a plurality of users, the advertisements relate to items offered for auction and to goods/services offered by a third party (col. 5, lines 35-40, col. 11, lines 55-67). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the advertisements of Keithley in the system of Borman, Ferguson, and Cummings since the advertisements of Keithley would have provided additional funds for the system as suggested by Keithley (col. 12, lines 17-21).

26. Claims 98-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman, Ferguson, and Cummings, as above, further in view of DELPHI/Boston SGBH Auction, Jan. 1987.

Art Unit: 3622

DELPHI/Boston for the WGBH Online Computer Auction teaches obtaining an auction participant's assent to terms of sale before accepting bids over the network ("We would love to have you participate, however we can only authorize bidders using either MasterCard or Visa." It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the participant's assent as in DELPHI/Boston's WGBH Online Auction since this would have been adopted for the intended use of registration and collection of fees as in Borman and Ferguson.

27. Claims 133, 135-138, 145-146, 196-207, 210-211 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman et al., "Electronic Agricultural Auctions in the United Kingdom" in view of Ferguson et al., patent number 5,819,092 further in view of Cummings "Stealing the Real Estate Spotlight", Business Journal of New Jersey, v. 3, n.6, p. 37.

Borman teaches a computer implemented method of facilitating internet auctions comprising: receiving information from a seller including information about an item to be auctioned including information identifying the item to be auctioned ("Information about the products for sale is fed into IBM compatible PCs or terminals" (products include cattle, sheep, pigs, grain) "This information...is made available electronically to potential buyers several hours prior to the auction in the form of an electronic catalogue."); based in part on the auction scheduling input, conducting an online auction for the item including receiving bids and terminating the auction of the item based on a predetermined condition ("information...is made available electronically to potential buyers several hours prior to the auction in the form of an electronic catalogue"; "The

electronic auctions themselves are very similar to the traditional auctions. A lot appears on the computer screen at a certain starting price. This price is then decreased every five seconds by a predetermined amount, until the first offer to buy is registered, i.e., until the first buyer presses the appropriate key on his/her keyboard. The price of the product is increased if further offers to buy are registered. The product is declared as sold, when 15 seconds have elapsed since the last offer to buy.").

Ferguson teaches receiving information from a seller including information about the item to be auctioned at a computer system programmed to receive information over a communication network including a selection of a predetermined category from a predetermined list of categories (col. 9, lines 45-49, col. 23, lines 36-55, line 65 – col. 24, line 22); storing at least a portion of the information in a database and mapping the received information into a presentation format and displaying the presentation format to a plurality of buyers (col. 9, lines 45-49, col. 10, lines 11-40, 55-65, col. 23, lines 36-55, 65 – col. 24, line 37). Ferguson also teaches item subcategories (col. 15, lines 5-7); including an item description and image (col. 23, line 65 – col. 24, line 15). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included receiving information including a designation of a category selected from a list of categories as in Ferguson in Borman since this would have been adopted for the intended use of generating the electronic catalogue of Borman for including cattle, sheep, pigs, grain and for displaying auction item images as desired by Borman. It also would have been obvious to have notified the seller by email of the outcome of the auction since Borman teaches the seller has access to the system through a franchise

Art Unit: 3622

before the auction where the seller does not need to be present during the auction.

Notification of the result and the buyer's identity would have been necessary for the transportation of the auctioned goods.

Concerning receiving input relating to scheduling an auction for the item, Cummings teaches "a distinct advantage of selling property at an auction is that 'the seller sets the conditions' ... the seller chooses the specific day and time when the property is to be sold". In considering Cummings, it is clear that the reference is reasonably pertinent to the particular problem with which the inventor is involved or reasonably related to the problem that the applicant has solved, i.e. "conducting the auction, at least in part, based upon seller input relating to scheduling the auction."

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included input from the seller relating to scheduling the auction of Borman since it is the desire of Borman to provide a "complementary service" to traditional auctions and "to replace traditional auctions by electronic auctions" which would include incorporating the steps of a traditional auction including the seller scheduling the auction as shown in Cummings. Borman also teaches "The electronic auctions themselves are very similar to the traditional auctions."

Further, "it is well settled that it is not 'invention' to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. (In re Venner, 120 USPQ 192-196). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to have replaced a manual step of inputting a schedule for the auction by the seller with an automatic control interface for

Art Unit: 3622

inputting a schedule for the auction by the seller in the system of Borman since it has generally been established that the use of a conventional control to automate a previously manual generation involves only routine skill in the art and the same result, scheduling the auction, exists. (In this case, Patterson, Jr. et al., demonstrates routine skill in the art of providing an automatic control interface for allowing the seller to input the schedule for an auction (fig. 4, 386h-386m, col. 12, line 60- col. 13, line 1).) or Debenedictis et al for inputting a bidding duration (fig. 29).

Further, concerning scheduling input for duration, start/end times, start immediately, invoked manually, it would have been obvious to one having ordinary skill in the art at the time of the invention to have included these time parameters since they are encompassed with the scheduling features of Borman, Ferguson, and Cummings.

28. Claims 134, 141 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman, Ferguson, and Cummings as above, further in view of DELPHI/Boston.

DELPHI/Boston teaches notifying by email that a bid submitted by the winning buyer was a winning bid ("Congratulations! You are the successful high bidder for the item mentioned above"). It would have been obvious to one having ordinary skill in the art at the time of the invention to have notified the winner as in DELPHI/Boston in the system of Borman, Ferguson, and Cummings in order to claim the item and arrange for delivery of the item as in DELPHI/Boston.

29. Claims 139-140 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman, Ferguson, and Cummings, as above, further in view of Du Bois, "Better Impression: Art Market Continues to Show Recovery Signs".

Du Bois teaches seller provided information includes a reserve price for the item to be auctioned ("Among works that did not reach his secret reserve price were a 1878 Degas..."). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included a reserve price in the system of Borman, Ferguson, and Cummings in order to protect the seller from unrealistic low bids where Cummings suggests that the seller reserves the right to refuse to sell to the highest bidder.

30. Claims 142-144 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman, Ferguson, and Cummings as above, further in view of Banatre et al., "The Design and Building...Marketing System.

Banatre teaches notifying the seller of an outcome of the auction and of the winning buyer's identity ("When all buyers have answered, the value of the best offer is displayed on the seller's control unit...", p. 20, appendix). It would have been obvious to have notified the seller by email of the outcome of the auction since Borman teaches the seller has access to the system through a franchise before the auction where the seller does not need to be present during the auction. Notification of the result and the buyer's identity would have been necessary for the transportation of the auctioned goods.

31. Claims 212-218 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borman, et al., "Electronic Agricultural Auctions in the United Kingdom" in view of "on

Art Unit: 3622

Cummings "Stealing the Real Estate Spotlight", Business Journal of New Jersey, v. 3, n.6, p. 37.

Borman teaches receiving input from a seller of an item to be auctioned including an identification of the item to be auctioned and input relating to scheduling an auction ("Information about the products for sale is fed into IBM compatible PCs or terminals" (products include cattle, sheep, pigs, grain) "This information...is made available electronically to potential buyers several hours prior to the auction in the form of an electronic catalogue."); and initiating an online auction based at least in part on the scheduling input ("The electronic auctions themselves are very similar to the traditional auctions. A lot appears on the computer screen at a certain starting price. This price is then decreased every five seconds by a predetermined amount, until the first offer to buy is registered, i.e., until the first buyer presses the appropriate key on his/her keyboard. The price of the product is increased if further offers to buy are registered. The product is declared as sold, when 15 seconds have elapsed since the last offer to buy.").

Concerning receiving input relating to scheduling an auction for the item, Cummings teaches "a distinct advantage of selling property at an auction is that 'the seller sets the conditions' ... the seller chooses the specific day and time when the property is to be sold". In considering Cummings, it is clear that the reference is reasonably pertinent to the particular problem with which the inventor is involved or reasonably related to the problem that the applicant has solved, i.e. "conducting the auction, at least in part, based upon seller input relating to scheduling the auction."

Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included input from the seller relating to scheduling the auction of Borman since it is the desire of Borman to provide a "complementary service" to traditional auctions and "to replace traditional auctions by electronic auctions" which would include incorporating the steps of a traditional auction including the seller scheduling the auction as shown in Cummings. Borman also teaches "The electronic auctions themselves are very similar to the traditional auctions."

Further, "it is well settled that it is not 'invention' to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. (In re Venner, 120 USPQ 192-196). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to have replaced a manual step of inputting a schedule for the auction by the seller with an automatic control interface for inputting a schedule for the auction by the seller in the system of Borman since it has generally been established that the use of a conventional control to automate a previously manual generation involves only routine skill in the art and the same result, scheduling the auction, exists. (In this case, Patterson, Jr. et al., demonstrates routine skill in the art of providing an automatic control interface for allowing the seller to input the schedule for an auction (fig. 4, 386h-386m, col. 12, line 60- col. 13, line 1).) or Debenedictis et al for inputting a bidding duration (fig. 29).

Further, concerning scheduling input for duration, start/end times, start immediately, invoked manually, it would have been obvious to one having ordinary skill

Art Unit: 3622

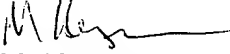
in the art at the time of the invention that these time parameters are encompassed with the scheduling features of Borman, and Cummings.

32. Claim 189 is objected to because of the following informalities: Claim 189 is a duplicate of 177. Appropriate correction is required.

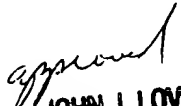
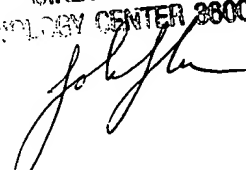
Any inquiry concerning this communication or earlier communications from the examiner should be directed to M Kemper whose telephone number is 703-305-9589. The examiner can normally be reached on M-F (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W. Stamber can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


M Kemper
Primary Examiner
Art Unit 3622

MK


JOHN J. LOVE
DIRECTOR
ELECTRONIC BUSINESS CENTER 2800
 6-17-04